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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY

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1 **Juan & Clara Franco**
 2 **2110 Manitou Ave. and 302 S. Ave #21**
 3 **Los Angeles, CA 90031**
 4 **Phone: 323-833-8344**
 5 **Fax:**
 6 **iammoadiv@yahoo.com**

8 **UNITED STATES DISTRICT COURT**
 9 **DISTRICT OF CALIFORNIA**

JUAN & CLARA FRANCO
PLAINTIFF,

VS.

CAL-WESTERN RECONVEYANCE CORP.
DEFENDANT

CASE #
CV12 04388 PA (Ex)

COMPLAINT

Jury Trial Demanded: **Yes** **No**

10
 11 **Comes now Juan & Clara Franco** hereinafter referred to as "Plaintiff," and moves the court for
 12 relief as herein requested:

13 **PARTIES**

14 Plaintiff in the instant cause is Juan & Clara Franco, hereinafter referred to as "Plaintiff."
 15 Plaintiff can be contacted at 2110 Manitou Ave. and 302 S. Ave #21, Los Angeles, CA 90031,
 16 and may be reached by phone at 323-833-8344, or by email at iammoadiv@yahoo.com.

17 Defendant is, Cal-Western Reconveyance Corp., and can be contacted at 525 E. Main
 18 Street, El Cajon, CA 92022-9004.

19 **JURISDICTION AND VENUE**

20 This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and § 1332
 21 placing the District Court in the position of Jurisdiction over:

22 A. claims of Federal Questions concerning Fair Debt Collection Practices Act,
 23 hereinafter referred to as "15 U.S.C. 1692"; questions and claims of violation of
 24 Constitutionally protected Fundamental Rights;

25 B. violations of Plaintiff's common-law Rights in matters involving Federal
 26 Corporations and Interstate Commerce in the form of lending and Banking;

27 violations of Plaintiff's Rights codified pursuant to Interstate Law/Compact entitled the
 28 Uniform Commercial Code ("UCC" hereafter).

The amount in controversy exceeds \$ 75,000.00.

This court also has supplemental jurisdiction over all other claims that are so related to claims in this action that they form part of the same case or controversy under Article III of the United States Constitution, pursuant to 28 U.S.C. § 1337 .

Venue is properly laid in the Federal Court of the United States in the Judicial District ,pursuant to 28 U.S.C. § 1391(c).

Plaintiff avers that the court has in personam jurisdiction over the named Defendant(s) as Defendant(s) are subject to the Jurisdiction of this Federal Court by the following facts:

- A. Defendant has entered into interstate commerce by causing to be transmitted through the United States Mail, - Title 18 § 1241;
- B. Defendant is subject to the FDCPA - Title 15 § 1692 et. seq. by acting as a Debt Collector, in that Defendant is not the originator of the alleged debt, neither is Defendant a bona fide agent of the originator or subsequent true holder of the alleged debt.

STATEMENT OF FACTS

Plaintiff states as a fact that Defendant, on or about 12/19/2011 caused to be prepared and sent to Plaintiff, a document noticing Plaintiff that Defendant was the agent for the holder of the note or the true holder of the note.

Defendant made demand on Plaintiff for payment of an alleged debt in the amount of \$387532.87. Defendant, by preparing and sending the above referenced communication claimed authority to collect said debt. Defendant claimed the existence of a document establishing a lien against the property owned by Plaintiff. Defendant claimed authority to exercise the provisions of said lien document for the purposes of collecting the above alleged debt.

Fair Debt Collection Practices Act § 803. Definitions [15 USC 1692a]

As used in this title -- (6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

To Plaintiff's knowledge, Plaintiff never entered into a contractual agreement with Defendant. Defendant claimed authority to exercise foreclosure on an alleged lien against the property. To Plaintiff's knowledge, Plaintiff never created a document creating a lien against Plaintiff's real property to the benefit of Defendant.

1 Said debt validation letter was sent to Defendant on a request for validation of the
 2 alleged under the provisions of the Fair Debt Collection Practices Act (FDCPA).

3 FDCPA Section 809. Validation of debts [15 USC 1692g]
 4 (b) If the consumer notifies the debt collector in writing within the thirty-day period
 5 described in subsection (a) that the debt, or any portion thereof, is disputed, or that the
 6 consumer requests the name and address of the original creditor, the debt collector shall
 7 cease collection of the debt, or any disputed portion thereof, until the debt collector
 8 obtains verification of the debt or any copy of a judgment, or the name and address of the
 9 original creditor, and a copy of such verification or judgment, or name and address of the
 10 original creditor, is mailed to the consumer by the debt collector.

11 Defendant has yet to properly respond to Plaintiff's debt validation letter, therefore,
 12 Defendant is subject to statutory estoppel from further collections attempts as a matter of law.

13 FACTUAL ACCUSATION

14 "A claim has facial plausibility when the plaintiff pleads factual content that allows the
 15 court to draw a reasonable inference that defendant is liable for the misconduct alleged."
 16 (Gonzales v. Kay, 577 F.3d 600(5th Cir. 2009)

17 **VALIDATION OF DEBT REQUIRED**

18 Defendant made a presentment to Plaintiff.

19 § 3-501. PRESENTMENT.

20 (a) "Presentment" means a demand made by or on behalf of a person entitled to enforce
 21 an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the
 22 instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii)
 23 to accept a draft made to the drawee.

24 In order for Defendant to make the above demand, Defendant must have some authority
 25 by way of a contractual agreement between Plaintiff and Defendant and upon request, must
 26 prove up said claim.

27 § 3-501. PRESENTMENT

28 (b)(2) Upon demand of the person to whom presentment is made, the person making
 29 presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if
 30 presentment is made on behalf of another person, reasonable evidence of authority to do
 31 so, and (iii) sign a receipt on the instrument for any payment made or surrender the
 32 instrument if full payment is made.

33 Up to the date of the filing of this instant action Defendant is non-responsive to Plaintiff's
 34 request for validation of the debt. Defendant's failure to properly validate the debt allegedly
 35 owed to Defendant gives Plaintiff reason to believe that Defendant lacks the agency, standing,
 36 and/or capacity claimed.

37 In deciding whether the collection letters violate the FDCPA, we examine them from the
 38 standpoint of an unsophisticated consumer. See Veach v. Sheeks, 316 F.3d 690, 692
 39 (7th Cir.2003); Bartlett v. Heibl, 128 F.3d 497, 500 (7th Cir.1997). "This assumes that
 40 the debtor is uninformed, naive, or trusting[.]" Veach, 316 F.3d at 693 (internal
 41 quotations omitted). However, an unsophisticated consumer possesses "rudimentary
 42 knowledge about the financial world" and is "capable of making basic logical deductions

1 and inferences.” Pettit v. Retrieval Masters Creditors Bureau, Inc., 211 F.3d 1057, 1060
 2 (7th Cir.2000). see Fields v. Wilber Law Firm, Donald L. Wilber and Kenneth Wilber,
 3 USCA-02-C-0072, 7th Circuit Court, Sept 2004

4 In as much as Defendant’s dunning letter failed to provide validation of the alleged debt,

5 Plaintiff may not, in good faith, respond with payment. In the event an actual debt existed to
 6 which Plaintiff was liable, Plaintiff would be subject to dishonor if Plaintiff made tender to
 7 Defendant without exercising due diligence in determining that Defendant was an agent for the
 8 principal holding the alleged note and the payments were not properly assessed against the note.

9 § 3-602. PAYMENT.

10 (a) Subject to subsection (b), an instrument is paid to the extent payment is made (i) by or
 11 on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to
enforce the instrument. To the extent of the payment, the obligation of the party obliged
 12 to pay the instrument is discharged even though payment is made with knowledge of a
 13 claim to the instrument under Section 3-306 by another person.

14 (b) The obligation of a party to pay the instrument is not discharged under subsection (a)
 15 if:

16 (1) a claim to the instrument under Section 3-306 is enforceable against the party
 17 receiving payment and (i) payment is made with knowledge by the payor that payment is
 18 prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in
 19 the case of an instrument other than a cashier's check, teller's check, or certified check,
 20 the party making payment accepted, from the person having a claim to the instrument,
 21 indemnity against loss resulting from refusal to pay the person entitled to enforce the
 22 instrument; or

23 (2) the person making payment knows that the instrument is a stolen instrument and pays
 24 a person it knows is in wrongful possession of the instrument.

25 Plaintiff, on investigation and belief, alleges that Defendant has perpetrated, and

26 continues to perpetrate an act of negligence against Plaintiff by attempting to collect a debt when
 27 Defendant has failed to provide the statutorily required validation of said debt. Even if a debt did
 28 exist, Plaintiff would not execute payment if Plaintiff tendered payment to a person or entity not
 29 properly authorized to take payment.

30 § 3-603. TENDER OF PAYMENT.

31 (a) If tender of payment of an obligation to pay an instrument is made to a person entitled
 32 to enforce the instrument, the effect of tender is governed by principles of law applicable
 33 to tender of payment under a simple contract.

34 (b) If tender of payment of an obligation to pay an instrument is made to a person entitled
 35 to enforce the instrument and the tender is refused, there is discharge, to the extent of the
 36 amount of the tender, of the obligation of an indorser or accommodation party having a
 37 right of recourse with respect to the obligation to which the tender relates.

38 (c) If tender of payment of an amount due on an instrument is made to a person entitled
 39 to enforce the instrument, the obligation of the obligor to pay interest after the due date on
 40 the amount tendered is discharged. If presentment is required with respect to an
 41 instrument and the obligor is able and ready to pay on the due date at every place of
 42 payment stated in the instrument, the obligor is deemed to have made tender of payment
 43 on the due date to the person entitled to enforce the instrument. (Emphasis added)

1 Plaintiff has properly stated a claim against Defendant as Plaintiff alleged who,
 2 defendant; what, made presentment to Plaintiff without establishing authority to make said
 3 claim; when, on date of dunning letter referenced above; where, within the jurisdiction and venue
 4 of this court. Plaintiff herein pleads that defendant intended that Plaintiff act on the defendant's
 5 presentment, that Plaintiff believed defendant intended to take action if Plaintiff did not submit
 6 to defendant's demands, and Plaintiff was subjected to a civil rights violation as a proximate
 7 result of Defendant's failure to abide by standing law.

8 **FDCPA**

9 Determining that "there is abundant evidence of the use of abusive, deceptive, and unfair
 10 debt collection practices by many debt collectors," Congress passed the Fair Debt Collection
 11 Practices Act (FDCPA) to eliminate those practices. 15 U.S.C. § 1692(a). The FDCPA protects
 12 consumers who have been subjected to abusive, deceptive or unfair debt collection practices by a
 13 debt collector in an attempt to collect a debt. *See Piper v. Portnoff*, 396 F.3d 227, 232 (3d Cir.
 14 2005) (citing 15 U.S.C. §§ 1692e-f).

15 Defendant, in the instant case, is not a party Plaintiff knowingly entered into a contract
 16 with. Defendant claims to hold agency or standing as a trustee or assignee of a debt. The
 17 allegation of Defendant is that Defendant is collecting a debt concerning a consumer mortgage
 18 agreement.

19 An assignee or substitute trustee, it is a debt collector within the meaning of §§ 1692d,
 20 1692e or 1692g4 of the FDCPA fails as a matter of law. More specifically, the argument that
 21 pursuant to the terms of § 1692a(6), assignees or substitute trustees are only liable under §
 22 1692f(6) fails as a matter of law. Section 1692a(6) states, in relevant part, that for the purpose of
 23 section 1692f(6) of this title, the term "debt collector" also includes any person who uses any
 24 instrumentality of interstate commerce or the mails in any business the principal purpose of
 25 which is the enforcement of security interests. Based on this language, any argument that
 26 assignees or substitute trustees are exempt from liability under all provisions of the FDCPA
 27 except § 1692f(6) fail as a matter of law.

28 Plaintiff alleges that a mortgage is a "debt" as defined by 15 U.S.C. § 1692a(5) because it
 29 constitutes an obligation to pay money that arose out a transaction in which the property was
 30 primarily for personal, family or household purposes. Plaintiff also asserts that, even if
 31 Defendant is unquestionably an assignee or substitute trustee, that fact does not preclude it from
 32 being held liable as a debt collector. *Piper*, 396 F.3d at 232 (applying the FDCPA to debts
 FDCPA Suit

1 secured by real property); *Romea v. Heiberger & Assocs.*, 163 F.3d 111, 116 (2d Cir. 1998)
 2 (concluding that an eviction notice for failure to pay rent can be an attempt to collect a debt);
 3 *Shapiro & Meinhold v. Zartman*, 823 P.2d 120, 124 (Colo. 1992) (holding that “a foreclosure is a
 4 method of collecting a debt” and, thus, the defendant attorneys “are not exempt merely because
 5 their collection activities are primarily limited to foreclosures”) *with Jordan v. Kent Recovery
 6 Servs., Inc.*, 731 F. Supp. 652, 658 (D. Del. 1990) (distinguishing a debt collector from an
 7 enforcer of a security interest, who has a “present right to a piece of secured property and
 8 attempts to retrieve something which another person possesses but which the holder of the
 9 security interest still owns”).

10 Plaintiff directs the court to consider the Fourth Circuit case of *Wilson v. Draper &*
 11 *Goldberg, PLLC*, 443 F.3d 373 (4th Cir. 2006). The plaintiff in *Wilson* brought suit against the
 12 law firm that acted as the substitute trustee for the holder of the deed of trust on the plaintiff’s
 13 property. The defendant initiated foreclosure proceedings on the plaintiff’s property and sent her
 14 a notice that provided information regarding the creditor and the amount of the debt owed. *Id.*
 15 The *Wilson* defendants included in their notice a statement specifying that they were not ““debt
 16 collectors’ or acting in connection with the collection of a ‘debt.’” *Id.* Nevertheless, the court
 17 held that the default on a Deed of Trust Note is a debt, and that concluding otherwise “would
 18 create an enormous loophole in the [FDCPA] immunizing any debt from coverage if that debt
 19 happened to be secured by a real property interest and foreclosure proceedings were used to
 20 collect that debt.” *Id.* at 376 (citing *Piper*, 396 F.2d at 234; *Romea*, 163 F.3d at 116; *Shapiro*,
 21 823 P.2d at 124). The *Wilson* court went on to explain:

22 Section 1692a(6) applies to those whose only role in the debt collection process is the
 23 enforcement of a security interest. See *Jordan*[, 731 F. Supp. at 657] (“It thus appears that
 24 Congress intended an enforcer of a security interest, such as a repossession agency, to fall
 25 outside the ambit of the FDCPA except for the provisions of § 1692f(6).”). In other
 26 words, this provision is not an exception to the definition of debt collector, it is an
 27 inclusion to the term debt collector. It serves to include as debt collectors, for the
 28 purposes of § 1692f(6), those who only enforce security interests. It does not exclude
 29 those who enforce security interests but who also fall under the general definition of
 30 “debt collector.” See *Piper*, 396 F.3d at 236 (“Section 1692a(6) thus recognizes that there
 31 are people who engage in the business of repossessing property, whose business does not
 32 primarily involve communicating with debtors in an effort to secure payment of debts.”).
 33 443 F.3d at 378 (emphasis in original).

34 Even if Defendant herein alleges to be acting as an assignee or substitute trustee to
 35 enforce a Deed of Trust Note, nevertheless, in initiating collection proceedings, Defendant
 36 undertook the role of debt collector and communicated with the Plaintiff in a manner regulated
 37 by the FDCPA. *See Wilson*, 443 F.3d at 376-78. Adopting a position that entities acting as

1 assignees or substitute trustees for mortgage holders are exempt from the provisions of the
 2 FDCPA is contrary to the stated purpose of the FDCPA. *See* 15 U.S.C. § 1692(a) (explaining that
 3 the FDCPA is designed to protect consumers from unfair collection practices). Accordingly,
 4 Plaintiff has alleged sufficient facts to support the claim that, for the purposes of the actions
 5 described in the complaint, the Defendant is attempting to collect a “debt” and Defendant was
 6 acting as a “debt collector.”

7 **NO ISSUE OF ACTUAL DEBT BEFORE THE COURT**

8 Plaintiff has sued Defendant to demand that Defendant comply with long standing law
 9 and well established principals of commerce. In as much as Defendant demanded that Plaintiff
 10 tender United States money to Defendant in payment of a debt, Plaintiff properly demanded
 11 validation of the debt. Where Defendant has claimed agency for a principal, Plaintiff demands
 12 that Defendant prove that Defendant’s alleged principal has standing as a proper holder of the
 13 alleged obligation. Plaintiff further demands proof of Defendant’s agency to represent said
 14 principal.

15 **AGENCY**

16 Key to the whole issue here is that agency cannot be presumed, and the party asserting
 17 agency carries the burden to prove it. *See* Schultz v. Rural/Metro Corp., 956 S.W.2d 757, 760
 18 (TX App. – Houston [14th Dist.] 1997, no writ); Zuniga v. Navarro & Assocs., P.C., 153 S.W.3d
 19 663 (TX App. – Corpus Christi 2005, pet. denied) (citing Bernsen v. Live Oak Ins. Agency, 52
 20 S.W.3d 306, 309 (TX App. – Corpus Christi 2001, no pet.)); Alamo Cmt. Coll. Dist. v.
 21 Browning Constr. Co., 113 S.W.3d 146 (TX App. – San Antonio 2004, pet. dism’d) (citing S.
 22 County Mut. Ins. Co. v. First Bank & Trust, 750 S.W.2d 170, 172 (TX 1988)); Disney Enters.,
 23 Inc. v. Esprit Fin., Inc., 981 S.W.2d 25, 30 (TX App. – San Antonio 1998, pet. dism’d w.o.j.);
 24 Gray v. Black, 267 S.W. 291 (TX Civ. App. 1924) (agency is not presumed; wife cannot be
 25 presumed to be husband’s agent). “[O]nly an alleged principal’s words or conduct that are
 26 represented to the third party can clothe an alleged agent with apparent authority. [BML Stage
 27 Lighting, Inc., v. Mayflower Transit, Inc., 14 S.W.3d 395, 401 (TX App. – Houston [14th Dist.]
 28 2000, pet. denied)].” *Coleman v. Klockner & Co. AG*, 180 S.W.3d 577, 588 (TX App. – Houston
 29 [14th Dist.] 2005, n.w.h.) (*Coleman*). In short, the alleged agent’s word, alone, never proves
 30 agency.

31

1 Therefore, where agency has been challenged, as it is, here, and where it's presumed into
 2 existence over that objection, the burden of proof has been shifted. Beard v. Banks, 542 U.S. 406
 3 (2004) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)); Scott v. Harris, __
 4 U.S. __, 127 S. Ct. 1769 (2007) (citing United States v. Diebold, 369 U.S. 654, 655 (1962))
 5 (summary judgment presumptions are against movant). Mullaney v. Wilbur, 421 U.S. 684 (1975)
 6 (citing In re Winship, 397 U.S. 358 (1970)) (to relieve the plaintiff of burden is to violate Due
 7 Process); Heiner v. Donnan, 285 U.S. 312 (1932) (fraud and/or negligence context).

8 ***CHALLENGE IS TO BOTH ACTUAL AND APPARENT AUTHORITY.***

9 Where there is no evidence, that a principal authorized someone to act as its agent,
 10 agency cannot be proven by declarations of the alleged agent." T & R Custom, Inc. v. Liberty
 11 Mut. Ins. Co., 227 Ga. App. 144, 145 (1) (488 S.E.2d 705) (1997). Accord Oglesby v. Farmers
 12 Mut. Exchange, 128 Ga. App. 387, 389 (6) (196 S.E.2d 674) (1973); Greble v. Morgan, 69 Ga.
 13 App. 641 (1) (26 S.E.2d 494) (1943). (1) Because there is no evidence in the record of Hilliard's
 14 agency, other than the hearsay itself, the evidence was properly excluded. See, e.g., Process
 15 Posters, Inc. v. Winn Dixie Stores, 263 Ga. App. 246, 250-251 (1) (587 S.E.2d 211) (2003).

16 It is fundamental that agency cannot be proven by the [*239] declaration of the agent.
 17 LAVELLEUR v. NUGENT, 186 Iowa 234 (Iowa 1919)

18 Arizona law provides that agency cannot be proven by the acts or declarations of the
 19 purported agent. Cameron v. Lanier, 56 Ariz. 400, 108 P.2d 579, 580 (Ariz. 1940). Instead,
 20 Relator "must prove affirmatively the authority" of Mr. Anderson to accept service on behalf of
 21 Dr. Levit, by either showing direct authority or implied authority. Id.United States ex rel.
 22 Goulooze v. Levit, 2006 U.S. Dist. LEXIS 77913 (D. Ariz. 2006)

23 Looking first to the concept of apparent authority, it is axiomatic that such authority
 24 exists only where there is a manifestation by the principal to a third party which causes the third
 25 party reasonably to believe that the particular person with whom the third party is dealing has the
 26 authority to enter into negotiations or to make representations on behalf of the principal. The
 27 State Life Insurance Co. v. Thiel (1939), 107 Ind. App. 75, 20 N.E.2d 693; Kody Engineering
 28 Company, Inc. et al. v. Fox and Fox Insurance Agency, Inc. (1973), 158 Ind. App. 498, 303
 29 N.E.2d 307, 39 Ind. Dec. 537. Such a manifestation by the principal may be found when the
 30 principal holds out an agent as a general [***5] agent and the third party reasonably believes
 31 that the authority exhibited is the type usually held by one in such a position; n2 or, where the
 32 [**843] principal clothes or allows a special agent to act with the appearance of possessing

1 more authority than is actually conferred. See: Farm Bureau Mutual Life Insurance Company v.
 2 Coffin (1962), 136 Ind. App. 12, 186 N.E.2d 180. Thus, to prove [*139] the existence of
 3 apparent authority, it is necessary to establish some conduct on the part of the principal which
 4 created the appearance of authority. The representations of the agent will not suffice, for it is the
 5 "well established rule that agency cannot be proven by the declarations of the agent, alone." Pan
 6 American World Airways, Inc. v. Local Readers Service, Inc. (1968), 143 Ind. App. 370, 377,
 7 240 N.E.2d 552, 556, 15 Ind. Dec. 429, 435. Storm v. Marsischke, 159 Ind. App. 136 (Ind. Ct.
 8 App. 1973)

9 It is elementary law that agency cannot be proven by the acts or declarations of the
 10 alleged agent. Newman v. Taylor, 69 Miss. 670, 13 So. 831; R. R. Co. v. Cocke, 64 Miss. 713, 2
 11 So. 495; Kinnare v. Gregory, 55 Miss. 612; Gilchrist v. Pearson, 70 Miss. 351, 12 So. 333. "An
 12 agent's authority cannot be proved by his acts done without the knowledge or authority of his
 13 principal." Whiting v. Lake, 91 Pa. 349. Therrell v. Ellis, 83 Miss. 494 (Miss. 1903)

14
 15 In view of a new trial, it is proper to say that the letter, "Exhibit E," on page 8 of the
 16 abstract, [***5] is [*695] not competent evidence in the case for any purpose. It tends to show
 17 the claimed agency by the declaration of the agent, and we need not cite authority in support of
 18 the proposition that agency cannot be established by the admissions or declarations of the person
 19 claimed to be an agent. Sax v. Davis, 81 Iowa 692 (Iowa 1891)

20 ***CHALLENGE TO STANDING OF ALLEGED PRINCIPAL***

21 Plaintiff has reason to believe, based on the widely publicized practices of banks in the
 22 United States that no instrument exists wherein Plaintiff can be shown to have an obligation to
 23 Defendant and/or even if such an instrument were to exist, because of the recent practices of
 24 banks in the United States, Plaintiff cannot be sure, absent proof, that Defendant has authority to
 25 collect said debt.

26 Current practices concerning consumer mortgages wherein the promise to pay (note) is
 27 immediately sold into an investment pool then the pool is divided up among a host of investors
 28 then pieces are sold back and forth between parties leaves the true holder of the note in question.
 29 With the current, highly publicized practices of registering the note with Mortgage Electronic
 30 Registration Service (MERS) for the purpose of hiding the true holder of the note behind MERS
 31 as a so-called "nominee" has been discredited by the courts. (see Landmark v Kessler and
 32 others) The courts have held the practice of using a straw man holder of the note to hide the

1 multiple sales of the note on the secondary consumer mortgage market as a scam to avoid the
2 requirement that the sale of a security instrument based on a consumer mortgage transaction be a
3 public transaction.

4 Plaintiffs challenge Defendant's authority, both as to actual authority and as to apparent
5 authority. Actual authority arises where the principal authorizes the agent. See Cameron County
6 Sav. Ass'n v. Stewart Title Guaranty Co., 819 S.W.2d 600, 603 (TX App. – Corpus Christi 1991,
7 writ denied). Plaintiff demands that Defendant establish the entire chain of agency, from
8 inception of the note up to the current alleged holder. Without said proof, no one has signature
9 authority. Apparent authority doesn't exist, either.

10 Defendant now has the burden to prove agency. See Schulz, etc., *supra*. Again, where
11 that burden is presumed and not compelled proved, the burden, by this request, has been shifted.
12 Cf. Coleman.

13 Plaintiff, on investigation and belief, alleges that Defendant violated the Fair Debt
14 Collections Protections Act to the detriment of Plaintiff by using false, deceptive, and misleading
15 representations or means in connection with the collection of an alleged debt wherein Defendant
16 misrepresented the character, amount, and legal status of the alleged debt; (15 USC 1692(e)(2))
17 & (f), and by threatening to take action against Plaintiff that could not legally be taken. (15 USC
18 1692(e)(5)). By causing to be sent to Plaintiff, through the United States mail, fraud and/or
19 negligenceulent demands for payment for which Defendant had no authority to make. Plaintiff
20 alleges and avers that Defendant caused to be sent through the United States Mail Service, fraud
21 and/or negligenceulent demands for payment from Plaintiff in order to facilitate the herein
22 alleged fraud and/or negligence. Plaintiff alleges and avers that Defendant subjected Plaintiff to
23 a fraud and/or negligence scheme to collect monies not owed to Defendant and that Defendant
24 intended to collect the full amount on an alleged debt, which over the term of the alleged debt
25 would amount to (full amount of principal and interest over term of alleged note), \$\$844,086.99 .

26 Plaintiff alleges and avers that the above alleged scheme has the result of making it
27 impossible for a purchaser of a private residence involved in said scheme to ever achieve the
28 primary purpose of the contract, that of achieving quiet title at completion of the contract.

29 Plaintiff alleges and avers that Defendant failed to exercise due diligence concerning
30 Defendant's standing to collect the alleged debt claimed by Defendant to be owed to Defendant
31 or Defendant's principal, by Plaintiff.

1 Plaintiff alleges and avers that Defendant subjected Plaintiff to severe emotional stress
2 through direct or implied threat that Plaintiff would lose Plaintiff's primary place of residence if
3 Plaintiff failed to pay the extortion demanded by Defendant.

4 **PLAINTIFF DEMANDS STRICT VERIFIED PROOF**

5 Plaintiff herein demands strict verified proof, according to the rules of evidence all of the
6 following:

7 A. that Plaintiff entered into a legal and binding contract with Defendant that would
8 establish the alleged debt;

9 B. that Defendant is the singular and true holder of said debt instrument; Plaintiff herein
10 demands strict verified proof, according to the rules of evidence, of the standing of every
11 signatory on each and every document filed into any court record concerning the
12 property, or sent to Plaintiff or any other entity concerning the alleged obligation
13 Defendant has attempted to collect from Plaintiff.

14 In the event that Defendant were to prove that a debt claim exists against the property,
15 and that Defendant is the holder or agent for the holder of said debt, Plaintiff demands strict
16 verified proof that Defendant's claim against the debt is the singular and exclusive claim based
17 on the purported contract, the basis of which Defendant is attempting to collect a debt.

18 Plaintiff herein demands strict verified proof, according to the rules of evidence that:

19 Plaintiff entered into a contract with Defendant, or Defendant's principal for whom
20 Defendant claims to act as agent, granting Defendant a legal claim against the property as
21 protection against loss in the event Plaintiff failed to meet the obligations of the above alleged
22 debt.

23 Defendant is the true and exclusive holder, or is the proper agent for said holder, of said
24 legal claim against the property.

25 The alleged document purporting to create a lien against the property was granted by
26 Plaintiff to Defendant or to Defendant's principal for whom Defendant claims to be acting as
27 agent.

28 In the event Defendant claims to have received assignment of the alleged debt instrument,
29 Plaintiff herein demands strict verified proof, according to the rules of evidence that Defendant,
30 or Defendant's principal, is the exclusive holder of said instrument.

In the event Defendant is able to produce a bona fide lien document, Plaintiff herein demands strict verified proof that Plaintiff granted such claim to Defendant by name, Defendant is, and at all times has been the holder of the alleged note purporting to evidence a debt.

Plaintiff herein demands strict verified proof, according to the rules of evidence that Defendant, at no time, received consideration in return for a transfer of the above referenced note, the basis of which the above referenced lien document was allegedly written as protection against loss to the holder, to a third party for consideration tendered.

In the event Defendant claims to be the holder of a lien document that was not granted directly to Defendant in Defendant's name, or in the name of the principal for which Defendant claims to act as agent, Plaintiff herein demands strict verified proof, according to the rules of evidence, of a complete chain of legal possession of said lien document.

In the event Defendant is able to produce a complete chain of legal possession of the above referenced document purporting to create a lien against the property, Plaintiff herein demands strict verified proof, according to the rules of evidence that, at all times, the ownership of the alleged lien document and the alleged note were transferred together such that, at no time, one entity held the alleged lien and another held the alleged note.

In the event that Defendant were to prove that a debt claim exists against the property, Plaintiff demands strict verified proof that Defendant's claim against the debt is the singular and exclusive claim based on the purported debt claim which Defendant is attempting to collect.

CAUSES OF ACTION

FDCPA – 1ST CAUSE OF ACTION

Comes now Plaintiff, and hereby complains and alleges that the Defendant did violate the Fair Debt Collection Practices Act, 15 U.S.C. 1692e and 1692f by providing false and misleading information by mailing a dunning letter dated 12/19/2011 by U.S.P.S. to the Plaintiff which asked for a lump sum of money. Defendant failed to prove up the existence of a debt to which Plaintiff was liable. Defendant failed to provide evidence to show that Defendant was a bona fide holder of a debt instrument to which Plaintiff was liable. Defendant failed to show agency for a bona fide holder of a debt instrument to which Plaintiff was liable. Defendant further failed to show that said bona holder was also a bona fide holder of a document establishing a lien against real property owned by Plaintiff. Defendant further failed to itemize the various charges that comprised the total amount of the alleged debt. Defendant failed to

1 clearly and fairly communicate information about the amount of the alleged debt to Plaintiff.
2 This includes how the total amount due was determined if the demand for payment includes add-
3 on expenses like attorneys' fees or collection costs, this in violation of 15 U.S.C. 1692(e).
4 Defendant used false, deceptive and misleading representations in connection with collection of
5 any debt, 15 U.S. C § 1692e. By demanding payment of a debt Plaintiff did not owe and by
6 making direct, indirect, and valid threats of dire consequences to Plaintiff if Plaintiff failed to
7 pay the alleged debt, Defendant acted in clear violation of 15 U.S.C. 1692(f), Fields v. Wilber
8 Law Firm, USCA-02-C-0072, Circuit Court, Sept 2, 2004B.

9 ***FDCPA – 2ND CAUSE OF ACTION***

10 Defendants "Bill" meets the definition of overshadowing. The overshadowing in the
11 document sent to the Plaintiff stated to "balance due" and "account paid in full which
12 overshadows the consumer warning on the document. 1996 U.S. Dist. LEXIS 22555, DEBRA
13 TYCHEWICZ, Plaintiff, v. RICHARD DOBBERSTEIN d/b/a CREDIT ASSOCIATES,
14 Defendant. 96-C-0195-S USDC FOR THE WESTERN DISTRICT OF WISCONSIN.

15 ***NEGLIGENCE – 3RD CAUSE OF ACTION***

16 Defendant, on 12/19/2011 caused to be sent to Plaintiff, through the United States Mail, a
17 letter demanding that Plaintiff pay United States Money in the amount of 387532.87. The letter
18 was in the form of a monthly payment. Defendant acted to miss-lead Plaintiff into believing that
19 Plaintiff was under obligation to forfeit Plaintiff's personal property to Defendant in the form of
20 money of the United States. Defendant made the above referenced demand on Plaintiff under the
21 guise of being a debt collector, attempting to collect a debt.

22 Defendant made a false representation to Plaintiff demanding payment on a debt.
23 Defendant knew, or should have known that said demand was made without standing or capacity
24 on the part of Defendant. Defendant intended that Plaintiff accept the representation of
25 Defendant as true. Plaintiff believed Defendant and was harmed thereby.

26 Defendant, by falsely demanding payment from Plaintiff when Defendant lacked
27 standing and/or capacity to make such demand was an act of criminal fraud and/or negligence
28 which results in the civil tort alleged here under the cause of action of common law fraud and/or
29 negligence or fraud and/or negligence per se.

1 **STIPULATION SUBJECT TO DISCOVERY**

2 In the interest of judicial economy and of limiting the scope of this litigation, Plaintiff is
3 prepared to stipulate Defendant's standing and file an amended complaint, without requiring
4 Defendant to prepare an answer to the current complaint, if Defendant provides proof of said
5 standing as demanded above.

6 **JURY DEMAND**

7 Plaintiff requests a jury trial on all issues of fact and law raised by the allegations in this
8 Complaint.

9 **PRAYER**

10 WHEREFORE, Plaintiff prays for judgment against the Defendant and Defendant's co-
11 conspirators as follows:

12 1. For quite title to Property against claims by Defendant;
13 2. For disgorgement of all amounts wrongfully acquired by Defendant according to
14 proof at trial;
15 3. For \$2000.00 for each violation of the Fair Debt Collection Practices Act as
16 proved up at trial;
17 4. For three times the amount Defendant intended to defraud and/or negligence
18 Plaintiff of. A sum equal to ;
19 5. For pain and suffering due to extreme mental anguish in an amount to be
20 determined at trial;
21 6. For pre-judgment and post-judgment interest according to proof at trial;
22 7. For attorney's fees and costs as provided by statute; and,
23 8. For such other relief as the Court deems just and proper.

24 Respectfully,

25 
26 Juan & Clara Franco
27

VERIFICATION

We, Juan and Clara Franco do swear and affirm that all the statements made herein are true and accurate in all respects, to the best of our knowledge.

Dated: 05/03/2012

Juan Franco

**2110 Manitou Ave. and 302 S. Ave #21
Los Angeles, CA 90031**

~~Clara Franco~~

**2110 Manitou Ave. and 302 S. Ave #21
Los Angeles, CA 90031**

State of California

1

County of Los Angeles

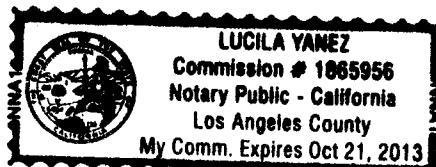
1

On May 3, 2012, before me Lucila Yanez, a Notary Public for the State of California, personally appeared JUAN FRANCO and CLARA FRANCO who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument

WITNESS my hand and official seal.

Lucila Yanez-Notary Public
Commission #1865956

My commission expires: October 21, 2013



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Percy Anderson and the assigned discovery Magistrate Judge is Charles Eick.

The case number on all documents filed with the Court should read as follows:

CV12- 4388 PA (Ex)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

FOR OFFICE USE ONLY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Juan & Clara Franco	CASE NUMBER
	CV12-4388 PA (Ex)
PLAINTIFF(S)	
v.	
Cal-Western Reconveyance Corp.	SUMMONS
DEFENDANT(S).	

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Juan & Clara Franco, whose address is 2110 Manitou Ave. and 302 S. Ave #21. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 5/21/12

By: C. Powers

Deputy Clerk

(Seal of the Court)



1181

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- A. Arise from the same or closely related transactions, happenings, or events; or
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
<i>CALFO LOS ANGELES</i>	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
<i>SAN DIEGO</i>	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
<i>LOS ANGELES</i>	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER) *James H. Branard* Date 5/21/12

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))